

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOHN BROWN,

Plaintiff,

v.

TAKEUCHI MFG. CO. (U.S.), LTD., et  
al.,

Defendants.

No. 2:21-CV-0392-JAM-DMC

**ORDER**

Plaintiff, who is proceeding with retained counsel, brings this civil action. Pending before the Court is Defendant Takeuchi Mfg. Co. (U.S.), Ltd.'s motion to compel Plaintiff's attendance at his deposition, ECF No. 109. Plaintiff has filed an opposition, ECF No. 114, and Defendant has filed a reply, ECF No. 116. The parties appeared before the undersigned on September 14, 2023, at 11:00 a.m., in Sacramento, California, for a hearing on Defendant's motion. After considering the moving, opposing, and reply papers, as well as arguments and representations made by counsel at the hearing, the Court made certain orders from the bench which are memorialized here.

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1           The current discovery dispute concerns Plaintiff's failure to appear for several  
2 noticed depositions. In the briefs and at the hearing, counsel represented that they have agreed  
3 that Plaintiff will appear for his deposition on September 20, 2023, in Davis, California, as  
4 currently noticed. The Court hereby expects Plaintiff to appear as agreed and represented, and so  
5 orders. Plaintiff's failure to appear will subject Plaintiff to terminating sanctions. Should  
6 Plaintiff fail to appear, the Court will receive declarations from the parties concerning imposition  
7 of sanctions, including monetary and terminating sanctions, as well as an award of reasonable  
8 expenses.

9           Plaintiff's deposition may include inquiry as to the nature of the alleged prosthetic  
10 surgery on August 3, 2023, and the scope and nature of Plaintiff's sores that prevented the  
11 deposition noticed for August 16, 2023. If there is evidence to support a finding of bad faith or  
12 misrepresentations by Plaintiff's counsel made in filings before this Court, the matter will be  
13 subject to a further motion for imposition of sanctions.

14           If disputes arise during the deposition, the parties are directed to meet and confer  
15 and contact the undersigned's chambers for informal resolution.

16           The Court will defer final ruling on Defendant's pending motion to compel until  
17 after the current date set for Plaintiff's deposition and, if Plaintiff does not appear or if evidence  
18 of bad faith arises, submission of further declarations.

19           IT IS SO ORDERED.

20       Dated: September 19, 2023



21           DENNIS M. COTA  
22           UNITED STATES MAGISTRATE JUDGE